Supreme Court, U.S.
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NO. 89-10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LINDY D. COSGROVE,

Petitioner,

v.

STATE OF SOUTH DAKOTA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH DAKOTA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER A STATE STATUTE REQUIRING MOTORISTS TO MAINTAIN ONE OF FOUR FORMS OF FINANCIAL RESPONSBIILITY VIOLATES AN INDIVIDUAL'S FIRST AMENDMENT RIGHT TO FREE EXERCISE OF RELIGION WHEN ONE OF THE FOUR OPTIONS IS INCONSISTENT WITH HIS RELIGIOUS BELIEFS?

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OCTOBER TERM, 1989

LINDY D. COSGROVE,

Petitioner,

v.

STATE OF SOUTH DAKOTA,

Respondent.

The Respondent, State of South Dakota, respectfully prays that Petitioner's Application for a Writ of Certiorari to review the judgment of the Supreme Court of the State of South Dakota in the above-entitled proceeding be denied.

OPINIONS BELOW

The opinion of the Supreme Court of South Dakota dated May 3, 1989, is reported

at 439 N.W.2d 119 (S.D. 1989), and is reprinted in the appendix to the Petition. The Judgment of the South Dakota Supreme Court was entered May 3, 1989, and is reprinted in the appendix hereto at A-1. The Judgment of Conviction in the above-entitled matter was issued on May 23, 1988, by the Circuit Court for the Third Judicial Circuit, Brule County, South Dakota. This unreported judgment is reprinted in the appendix hereto at A-3.

JURISDICTION

The Respondent accepts the Petitioner's assertion that jurisdiction in the above-entitled matter may be invoked, if this Court grants the writ, pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

STATE STATUTE INVOLVED

SDCL 32-35-113. Every driver or owner of a motor vehicle shall at all times maintain in force one of the forms of financial responsibility on the motor vehicle by one of the following methods:

1. Having in force on the motor vehicle an owner's policy of liability insurance as provided in § 32-35-70;
2. Having in force a bond as provided in § 32-35-83;
3. Having a certificate of deposit of money or securities as provided in § 32-35-87, but in the amount of fifty thousand dollars; or

4. Having a certificate of self-insurance, as provided in §§ 32-35-90 and 32-35-91, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

Failure to maintain financial responsibility is a Class 2 misdemeanor.

STATEMENT OF THE CASE

References to the Petitioner's trial transcript will be made by the letters "TR," followed by the applicable page number. Reference will also be made to the appendix attached hereto.

On January 24, 1988, Petitioner was issued a citation for failure to maintain proof of financial responsibility in violation of SDCL 32-35-113. TR 12. At his court trial on March 22, 1988, Petitioner did not dispute the fact that he had failed to maintain proof of financial responsibility as required by South Dakota law. TR 14. He contended that he has a religious conviction precluding him from purchasing insurance, only one of the options under South Dakota's financial responsibility law. TR 14. He also testified that he did not have any religious conviction against the other three alternatives available under SDCL 32-35-113. TR 14, 15, 16.

The trial court found Petitioner guilty and fined him $75. TR 30. The Petitioner's conviction was affirmed upon appeal to the Supreme Court of South Dakota. A-1.

REASONS FOR DENYING THE WRIT

I

THE STATE COURT BELOW, IN DECIDING THE ISSUE PRESENTED BY THE PETITIONER, RELIED UPON APPLICABLE DECISIONS OF THIS COURT AND RULED CORRECTLY.

Petitioner asserts that one option under South Dakota's financial responsibility law, insurance, contravenes his religious convictions. The State does not contest this assertion. According to Petitioner, because of the mere existence of this option, he should be exempt from criminal prosecution for failure to comply with the state law.

This Court has consistently ruled that the First Amendment does not confer the right to commit crimes upon adherents of particular religious beliefs. Employment Division v. Smith, ___ U.S. ___, 108 S.Ct. ___, 99 L.Ed.2d 753 (1988); Braunfeld v. Brown, 366 U.S. 599, 603 (1961), reh'g denied, 368 U.S. 869 (1961); Cox v. New Hampshire, 312 U.S.

569 (1941); Reynolds v. United States, 98 U.S. 145 (1878). While the First Amendment does provide protection for legitimate claims to the free exercise of religion, it does not protect conduct that a state has "validly proscribed." Employment Division v. Smith, 99 L.Ed.2d at 764.

In considering whether state criminal laws legitimately proscribe specific conduct, this Court considers whether the state has a compelling interest in enforcing the statute involved. Sherbert v. Verner, 374 U.S. 398 (1963); Thomas v. Review Board of Indiana Employment Security Division, 450 U.S. 707 (1981). If a compelling interest is found, the Court then determines whether the state statute is the least restrictive means of achieving the state's legitimate objective. Sherbert v. Verner, supra, and Thomas v. Review Board, supra.

The South Dakota Supreme Court, following this analysis, determined that the State does have a compelling interest in enforcing its motor vehicle financial responsibility law. This compelling interest arises from the State's need to protect citizens from drivers who are unable or unwilling to be responsible for damage they may inflict and thus place that burden upon the public treasury or the individual victim.

The South Dakota court's opinion that financial responsibility laws are designed to protect the public both individually and collectively is consistent with this Court's decision in Kesler v. Department of Public Safety, 369 U.S. 153 (1962). Therein, the Court stated that financial responsibility laws protect the public safety by discouraging careless driving or at least mitigating its consequences. 369 U.S. at 158.

The State court's determination also comports with this Court's previous opinions holding that when conduct poses a substantial threat to public safety, peace, or order, a Free Exercise of Religion challenge may be rejected. Employment Division v. Smith, 99 L.Ed. at 764 n.13; Reynolds v. United States, 98 U.S. at 166.

The South Dakota court properly found that the State has a compelling interest in enforcing this public safety statute.

The South Dakota Supreme Court next considered whether the State's interests could be met by less restrictive means. The South Dakota court determined that options already exist within the State financial responsibility law that would allow the Petitioner to "stay within the bounds of the statute while maintaining the integrity of his religious belief." State v. Cosgrove, 439 N.W.2d 119, 121 (1989).

In order to comply with the State's financial responsibility law, Petitioner has the option of purchasing a surety bond or tendering a certificate of deposit to the state treasurer.[1] SDCL 32-35-113(2) and 32-35-113(3).

While Petitioner contends that these other options are not "viable options," he has no religious conviction that would prohibit him from complying with those other requirements. TR 14, 15, 16. He considers the other options to be a financial burden. The State acknowledges that these alternatives are burdensome to Petitioner. It must, however, be recognized that "every person cannot be shielded from all the

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[1]One other option, self-insurance, is not available to Petitioner because it applies only to motorists with a fleet of over twenty-five vehicles. Petitioner does not have twenty-five vehicles.

burdens incident to exercising every aspect of the right to practice religious beliefs." United States v. Lee, 455 U.S. 252, 261 (1982).

Petitioner asserts that a less restrictive alternative would be to create a religious exemption from South Dakota's motor vehicle responsibility law. As justification, Petitioner asserts that other exemptions already exist. This assertion is analogous to arguing that religious exemptions should be granted from South Dakota's child passenger restraint law because other exemptions exist.[2] The fact

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[2]SDCL 32-27-1. Every parent or legal guardian of a child under five years of age, when transporting the child on the streets and highways of this state in a passenger vehicle, shall provide for the protection of the child by properly securing the child in a child passenger restraint system according to manufacturer's instructions. The child

(Footnote Continued)

that the state legislature has determined that other kinds of exemptions suit its legislative purpose does not provide a reason for the court to grant a religious exemption. A religious exemption, if granted, could be harmful to other motorists, or in the case of

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(Footnote Continued)
passenger restraint system must meet department of transportation motor vehicle safety standard 213 as in effect January 1, 1984. The requirements of this section may be met when the child is at least two and under five years of age by securing the child in a seat belt. A parent or guardian who violates this section is guilty of a petty offense.

SDCL 32-37-2. The provisions of § 32-37-1 do not apply:

> (1) To drivers licensed in another state or jurisdiction;
> (2) If the child's personal needs are being attended to by someone other than the driver;
> (3) If all seating positions equipped with child passenger restraint systems or seat belts are occupied;
> (4) In passenger cars manufactured before 1966 that have not been equipped with seat beats.

the child passenger restraint law, to the motorist's own child.

Unlike religious exemptions, the alternatives of purchasing a surety bond or tendering a certificate of deposit to the State Treasurer allow the State to achieve its goal of protecting the public safety. While these alternatives may cause a financial burden to Petitioner they are the least restrictive alternative.

Following this Court's analysis of Free Exercise of Religion questions, the South Dakota Court determined that Petitioner is required to comply with South Dakota's financial responsibility law notwithstanding his religious conviction.

II

THE ISSUE IS NOT SUFFICIENTLY IMPORTANT TO WARRANT REVIEW BY THIS COURT.

The Petitioner's Application for a Writ of Certiorari addresses the issue of whether

Petitioner should be exempt from a state financial responsibility law because he has a religious conviction against one of four options under that law, liability insurance. That issue does not merit the attention of this Court.

This Court has indicated that it will exercise its discretion to review a decision only when there are special and important reasons to do so. Rules of the Supreme Court, 17.1. There are no special or important reasons to review the South Dakota decision. Instead, there valid reasons to decline review.

First, the South Dakota court's decision is, as addressed above, consistent with applicable decisions of this Court. Second, there is no disparity in opinion among state or federal courts regarding this issue. In fact, neither Petitioner's Application nor the State court decision recite any lower

court opinion that has discussed the issue involved in this case. Likewise, Petitioner has not shown that this issue is likely to arise in either state or federal courts at any time in the future. As Justice Brennan has stated, a slot on the court's calendar is both "precious and costly." Employment Division v. Smith, 99 L.Ed.2d at 769. This matter is undeserving of one of the few precious and costly positions on the court's calendar.

III

A DIFFERENT RESULT FROM THAT REACHED BELOW WOULD CAUSE A SEVERE BURDEN IN ENFORCING FINANCIAL RESPONSIBILITY LAWS.

The Petitioner maintains that his conviction should be reexamined and reversed. If the Court did examine this issue and determine that the Supreme Court of South Dakota's decision should be reversed, South Dakota and other states that have financial

responsibility laws or other compulsory insurance laws, would be faced with a severe burden in enforcing them.

Due to the cost of liability insurance,[3] many motorists would file insincere "religious objection" claims to compulsory insurance or financial responsibility laws in order to avoid enforcement.

This Court has recognized that it would be tempting for individuals to claim a religious exemption from state regulation when an economic benefit would result. Braunfeld v. Brown, 366 U.S. at 609, 455 U.S. at 263 n.3.

Licensing authorities could be overwhelmed by requests for religious

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[3]Although the record is silent on this issue, the Petitioner alleges that the average cost of insurance is $500 per year in South Dakota.

exemptions from individuals who do not have genuinely held religious beliefs against purchasing insurance. These insincere petitions could make financial responsibility and other compulsory insurance laws unworkable.

Such religious exemption claims could necessitate a multitude of inquiries into the sincerity of individuals' religious beliefs. States would then be faced with determining whether such investigations would contravene constitutionally protected religious guarantees. Braunfeld v. Brown, 366 U.S. at 609.

Reversal of the South Dakota Court's decision would only create further difficulties in enforcing financial responsibility laws.

CONCLUSION

The State respectfully requests that the Petition for Certiorari be denied.

Dated this 2nd day of August, 1989.

Roger A. Tellinghuisen

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Appeal No. 16294
IN THE SUPREME COURT)
State of South Dakota)SS.

May 3, 1989

Present: Chief Justice George W. Wuest and Justices Robert E. Morgan, Frank E. Henderson, Richard W. Sabers and Robert A. Miller.

STATE OF SOUTH DAKOTA)
)
Plaintiff and Appellee,)
)
v.)
)
LINDY D. COSGROVE,)
)
Defendant and Appellant.)

This cause coming on to be heard upon the merits of the cause, oral argument having been dispensed with by the Court, and the Court having advised thereon and filed its decision in writing, now, therefore,

IT IS CONSIDERED, ORDERED AND ADJUDGED that the Judgment of the Circuit Court, within and for Brule County, appealed from herein, be and the same is hereby affirmed,

AND IT IS FURTHER ORDERED that this cause be and it is hereby remanded to said circuit court for further proceedings

according to law and the decision of this Court.

AND IT IS FURTHER ORDERED AND ADJUDGED that no costs be taxed.

BY THE COURT:

/s/ George W. Wuest
Chief Justice

Attest:

/s/ Gloria J. Engel
Clerk of the Supreme Courts

(SEAL)

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
: SS
COUNTY OF BRULE) FOURTH JUDICIAL CIRCUIT
CRIM. NO. 88-19

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

LINDY D. COSGROVE,
Defendant.

JUDGMENT OF CONVICTION

A complaint was filed with this Court on the 24th day of January, 1988, charging the Defendant with the crime of NO INSURANCE ON VEHICLE (SDCL 32-35-113). The Defendant was arraigned on said Complaint on the 16th day of February, 1988, the Defendant, who was not represented by an attorney, having waived his right to counsel, and Ann M. Arnoldy, as Prosecuting Attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charge that had been filed against the Defendant. The Defendant plead Not Guilty to the charge contained in the Complaint.

A trial commenced on the 22nd day of March, 1988, in Chamberlain, South Dakota on the charges. On said date, the Court made and entered Findings of Fact and Conclusions of Law, and returned a verdict of: GUILTY.

It is, therefore, ORDERED that a judgment of Guilty is entered as to the following: NO INSURANCE ON VEHICLE in violation of SDCL 32-35-113.

SENTENCE

On the 22nd day of March, 1988, the Court asked the defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant:

Be fined in the amount of Seventy-Five Dollars ($75.00), which can be served at Twenty Dollars ($20.00) per day in the Brule County Jail; and the Defendant shall be given

a stay of execution of said sentence, pending appeal of the matter and notice thereof within thirty (30) days of this date.

Dated this 23rd day of May, 1989, at Chamberlain, South Dakota.

ATTEST:

/s/ Bernadine Rindels
Clerk--Brule County
(SEAL)

BY THE COURT:

/s/ Ronald K. Miller
Circuit Court Judge